

PATENT COOPERATION TREATY

From the
INTERNATIONAL SEARCHING AUTHORITY

Translation

PCT

WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY

(PCT Rule 43bis.1)

To:

Date of mailing
(day/month/year) See form PCT/ISA/210

Applicant's or agent's file reference
WP-1846-P

FOR FURTHER ACTION
See paragraph 2 below

International application No.
CH2004/000004

International filing date (day/month/year)
09-01-2004

Priority date (day/month/year)
17-01-2003

International Patent Classification (IPC) or both national classification and IPC
B65C 3/06, B29C 65/00, 65/18, 65/78, B29B 13/02

Applicant
CREBOCAN AG

1. This opinion contains indications relating to the following items:

- ☒ Box No. I Basis of the opinion
- ☒ Box No. II Priority
- ☒ Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
- ☒ Box No. IV Lack of unity of invention
- ☒ Box No. V Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
- ☐ Box No. VI Certain documents cited
- ☐ Box No. VII Certain defects in the international application
- ☐ Box No. VIII Certain observations on the international application

2. FURTHER ACTION

If a demand for international preliminary examination is made, this opinion will be considered to be a written opinion of the International Preliminary Examining Authority ("IPEA") except that this does not apply where the applicant chooses an Authority other than this one to be the IPEA and the chosen IPEA has notified the International Bureau under Rule 66.1bis(b) that written opinions of this International Searching Authority will not be so considered.

If this opinion is, as provided above, considered to be a written opinion of the IPEA, the applicant is invited to submit to the IPEA a written reply together, where appropriate, with amendments, before the expiration of 3 months from the date of mailing of Form PCT/ISA/220 or before the expiration of 22 months from the priority date, whichever expires later.

For further options, see Form PCT/ISA/220.

3. For further details, see notes to Form PCT/ISA/220.

Name and mailing address of the ISA/EP	Date of completion of this opinion	Authorized officer
Facsimile No.	Telephone No.	

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Box No. I Basis of the report

1. With regard to the language, this opinion has been established on the basis of:
 - ☐ the international application in the language in which it was filed
 - ☐ the translation of the international application into _____, which is the language of a translation furnished for the purposes of international search (Rule 12.3(a) and 23.1(b)).
2. With regard to any nucleotide and/or amino acid sequence disclosed in the international application and necessary to the claimed invention, this opinion has been established on the basis of:
 - a. type of material
 - ☐ a sequence listing
 - ☐ table(s) related to the sequence listing
 - b. format of material
 - ☐ on paper
 - ☐ in electronic form
 - c. time of filing/furnishing
 - ☐ contained in the international application as filed
 - ☐ filed together with the international application in electronic form
 - ☐ furnished subsequently to this Authority for the purposes of search
3. ☐ In addition, in the case that more than one version or copy of a sequence listing and/or table(s) relating thereto has been filed or furnished, the required statements that the information in the subsequent or additional copies is identical to that in the application as filed or does not go beyond the application as filed, as appropriate, were furnished.
4. Additional comments:

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Box No. II

Priority

1. ☒ The validity of the priority claim has not been considered because the International Searching Authority does not have in its possession a copy of the earlier application whose priority has been claimed or, where required, a translation of that earlier application. This opinion has nevertheless been established on the assumption that the relevant date (Rules 43*bis*.1 and 64.1) is the claimed priority date.
2. ☐ This opinion has been established as if no priority had been claimed due to the fact that the priority claim has been found invalid (Rules 43*bis*.1 and 64.1). Thus for the purposes of this opinion, the international filing date indicated above is considered to be the relevant date.
3. Additional observations, if necessary:

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Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability

The questions whether the claimed invention appears to be novel, to involve an inventive step (to be non obvious), or to be industrially applicable have not been examined in respect of:

- ☐ the entire international application
☒ claims, Nos. 13-17

because:

- ☐ the said international application, or said claims Nos. _____
relate to the following subject matter which does not require an international search (*specify*):

- ☐ the description, claims or drawings (*indicate particular elements below*) or said claims Nos. _____
are so unclear that no meaningful opinion could be formed (*specify*):

- ☐ the claims, or said claims Nos. _____ are so inadequately supported
by the description that no meaningful opinion could be formed (*specify*):

- ☒ no international search report has been established for said claims Nos. 13-17
- ☐ a meaningful opinion could not be formed without the sequence listing; the applicant did not, within the prescribed time limit:
- ☐ furnish a sequence listing on paper complying with the standard provided for in Annex C of the Administrative Instructions, and such listing was not available to the International Searching Authority in a form and manner acceptable to it.
 - ☐ furnish a sequence listing in electronic form complying with the standard provided for in Annex C of the Administrative Instructions, and such listing was not available to the International Searching Authority in a form and manner acceptable to it.
 - ☐ pay the required late furnishing fee for the furnishing of a sequence listing in response to an invitation under Rules 13ter.1(a) or (b).
- ☐ a meaningful opinion could not be formed without the tables related to the sequence listings; the applicant did not, within the prescribed time limit, furnish such tables in electronic form complying with the technical requirements provided for in Annex C-bis of the Administrative Instructions, and such tables were not available to the International Searching Authority in a form and manner acceptable to it.
- ☐ the tables related to the nucleotide and/or amino acid sequence listing, if in electronic form only, do not comply with the technical requirements provided for in Annex C-bis of the Administrative Instructions.
- ☐ See Supplemental Box for further details.

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Box No. IV Lack of unity of invention

1. ☒ In response to the invitation (Form PCT/ISA/206) to pay additional fees the applicant has, within the applicable time limit:
- ☐ paid additional fees
 - ☐ paid additional fees under protest and, where applicable, the protest fee
 - ☐ paid additional fees under protest but the applicable protest fee was not paid
 - ☒ not paid additional fees
2. ☐ This Authority found that the requirement of unity of invention is not complied with and chose not to invite the applicant to pay additional fees.
3. This Authority considers that the requirement of unity of invention in accordance with Rules 13.1, 13.2 and 13.3 is:
- ☐ complied with
 - ☒ not complied with for the following reasons:

SEE SUPPLEMENTAL BOX

4. Consequently, this opinion has been established in respect of the following parts of the international application:
- ☐ all parts
 - ☒ the parts relating to claims Nos. 1 - 12

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Box No. V Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. Statement

Novelty (N)	Claims	1-12	YES
	Claims		NO
Inventive step (IS)	Claims	1-12	YES
	Claims		NO
Industrial applicability (IA)	Claims	1-12	YES
	Claims		NO

2. Citations and explanations:

1. This report makes reference to the following documents:

D1: US 3 952 676 A (ROCKEFELLER WINSTON G), 27 April 1976 (1976-04-27)

D2: DE 197 16 079 A (JOERSS NORBERT; KLOTZKI ULRICH (DE)), 9 April 1998 (1998-04-09)

D3: . US 3 767 496 A (DOHERTY T ET AL), 23 October 1973 (1973-10-23)

D4: US 4 250 798 A (TAKASAKA MASAYUKI ET AL), 17 February 1981 (1981-02-17)

D5: US 3 865 662 A (SEGAL LEON), 11 February 1975 (1975-02-11)

2. Document D1 is regarded as the closest prior art and discloses (the references in parentheses are to that document):

a process by which a foil section (69a) is separated from a foil web (15a), wound from its front edge to its rear edge about a winding spindle (66) and retained with a little overlap on the winding spindle, [...] the adjacent foil front edge and rear edge zones

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Box No. V

Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability;
citations and explanations supporting such statement

[...] being sealed together (see figures 10 and 11). The subject matter of independent claim 1 differs therefrom in that the foil section is transferred onto a concave inner surface and the overlapping zone is sealed to the concave inner surface.

- 2.1 The subject matter of claim 1 is therefore novel (PCT Article 33(2)).

The present invention can therefore be considered to address the problem of making it possible to seal the overlapping zone without causing the foil section to slip along the winding spindle. This is achieved by applying a uniform pressure along the concave inner surface during sealing. None of the search report citations suggests this solution.

Although D1 discloses a concave inner surface that seals an overlapping zone (see figures 12-14), this is not achieved by winding about a winding spindle but by pressing into a mould.

The process as per claim 1 therefore involves an inventive step (PCT Article 33(3)).

- 2.2 The device for winding, sealing and applying a foil section to a can body is novel and inventive for the same reasons.

3. The invention is obviously industrially applicable.

Supplemental Box

In case the space in any of the preceding boxes is not sufficient.

Continuation of: BOX IV.3

The different inventions or groups of inventions are:

claims 1-12

process for applying a foil section to a can body

claims 13-15

can body

claims 16, 17

process for printing a foil web

For the following reasons, these inventions or groups of inventions are not so linked as to form a single general inventive concept (PCT Rule 13.1):

The technical feature common to the three groups of claims is a foil. However, this is generally known, for example from US3767496 (D3). A comparison between the three groups of claims in the present application shows that the following features make a contribution over the prior art in D3 and therefore can be regarded as special technical features:

group I: process for winding and welding a foil section by means of a concave inner surface for securely joining the two foil end pieces

group II: can body

group III: process for printing a foil

The comparison shows that there is no technical relationship within the meaning of PCT Rule 13.1 between the special technical features of these groups

Supplemental Box

of claims or between the problems solved thereby.

Consequently, the groups of claims lack unity of invention, both with regard to the special technical features and to the problems addressed (PCT Rule 13.2).

The application relates to a plurality of inventions or groups of inventions within the meaning of PCT Rule 13.1. These groups have been subdivided as described above. If the applicant were to pay additional fees for one (or more) groups of inventions which at present have not yet been searched, the additional searches could reveal further prior art documents showing that one (or more) of the not yet searched groups also lack unity of invention *a posteriori*. In that case, only the first invention in each of these groups of inventions for which lack of unity of invention would be determined would be searched, and no invitation to pay further fees would be issued. This is the case because PCT Article 17(3) stipulates that the International Searching Authority shall establish the international search report on those parts of the international application which relate to the invention first mentioned in the claims ("main invention") and on those parts of the international application which relate to inventions in respect of which additional fees were paid. Neither the PCT Treaty nor the PCT Guidelines provide any legal basis for further invitations to pay additional search fees (W17/00, point 11, and W1/97, points 11-16).